IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WA.No. 941 of 2005(E)

AGAINST THE JUDGEMENT/ORDER IN WPC.31683/2003 Dated 08/04/2005

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APPELLANT:

SMT.BINDU POTTAKKULATH,
VINOD NIVAS, P.O.VELLUR VIA, PAYYANNUR, KANNUR DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. P.SEENA, D/O.K.NARAYANAN,
AGED 23 YEARS, LPS.ASSISTANT,
CHANDRAN MEMORIAL L.P.SCHOOL,
P.O.VELLUR, VIA.PAYYANNUR, KANNUR DIST.

2. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

3. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM.

4. THE DISTRICT EDUCATIONAL OFFICER, KANNUR.

5. THE ASSISTANT EDUCATIONAL OFFICER, PAYYANNUR,
KANNUR DIST.

6. THE MANAGER, CHANDRAN MEMORIAL L.P.SCHOOL,
P.O.VELLUR, VIA. PAYYANNUR, KANNUR DIST.

BY ADV. SRI.M.SASINDRAN
SR.GOVT.PLEADER SRI.BENNY GERVACIS
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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W.A.No.941 OF 2005

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Dated this the 4th day of September, 2007

JUDGMENT

Radhakrishnan, J

This appeal is filed by 6th respondent in Writ Petition No.31683/03. Writ petition was preferred by the first respondent herein seeking a writ of certiorari to quash Exts.P1 to P4 orders and also for a writ of mandamus directing the 4th respondent to approve the appointment of the petitioner from 6.6.2001 and disburse the salary and allowance due to the petitioner. Petitioner has also sought for a declaration that the 6th respondent has no claim under Rule 51B of Chapter XIVA KER in preference to the petitioner.

2. The father of the appellant/6th respondent died on 18.1.1991, while serving as a teacher in the school. The appellant/6th respondent, born on 30.5.1975, was then aged 16 years. At that time, her mother and her elder sister were working as teachers in High School as also his brother. Appellant/6th respondent on attaining majority on 31.5.1993,

joined the Teachers' Training Course in 1993 and on completing the said course she preferred an application for compassionate appointment on 8.11.1995. The manager had appointed the petitioner as LPSA in the school from 13.11.2000 to 31.3.2001 against a leave vacancy and her appointment was approved, which entitled her for re-employment under Rule 51A of Chapter XIV A KER. Later, a regular vacancy arose on 6.6.2001 in which petitioner was appointed and the same was forwarded to the A.E.O. for approval. Approval was rejected by the A.E.O. vide Ext.P1 order dated 11.6.2001 holding that the appellant/6th respondent is a Rule 51B claimant has a superior claim. Appeals preferred by the manager and the petitioner against Ext.P1 were rejected by the D.E.O. vide Ext.P2 dated, 26.4.02.

3. A Division Bench of this court in **Deepak Vs. Secretary, General Education Department [2002 (3) KLT 288]** held as follows:

> "the compassionate appointment can be granted only to tide over the immediate financial crisis resulting

from the employee's death and the same cannot be insisted upon as a matter of course" It was further held that "if an application is made for compassionate appointment there must be some proximaty between the date of death as well as the date of application. It is not as if on the death of an employee, claim of the dependant is kept open for ever. Once the dependent is not always a dependant. There cannot be reservation of vacancy. We may indicate provision like Rule 51B and other Government Orders pertaining to compassionate appointment are all made on humanitarian consideration. It is always in the nature of exception to the general provision. Exception cannot always occupy the place of main provision and thereby nullify or dilute the efficacy of the main provision by denuding the right conferred by the main provision to the persons otherwise eligible"

4. The above legal position is well settled by a catena of decisions of this court and the apex court. The father of the appellant/6th respondent died on 18.1.1991 and the claim for compassionate appointment was made only on 30.11.1995. Further the mother of the 6th respondent and elder sister were

also employed as teachers and also her brother. Taking into consideration of all those facts, we are of the view that the learned Single Judge has rightly found that the appellant/6th respondent is not entitled to get the benefit of Rule 51B. We therefore find no reason to take a different view at this distance of time since the family has already got over the financial crisis.

Therefore, this Writ Appeal is dismissed.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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